

## **§ 11.312**

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

### **§ 11.312 Witness fees.**

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

### **§ 11.313 Trial procedure.**

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

### **§ 11.314 Jury trials.**

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence

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will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of eight Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Court of Indian Offenses under its general rulemaking authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Six out of the eight jurors must concur to render a verdict.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the Federal Government of jurors and witnesses. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

### **§ 11.315 Sentencing.**

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars (\$500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.